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Thomas Heintzman specializes in alternative dispute resolution. He has acted in trials, appeals and arbitrations in Ontario, Newfoundland, Manitoba, British Columbia, Nova Scotia and New Brunswick and has made numerous appearances before the Supreme Court of Canada.

Mr. Heintzman practiced with McCarthy Tétrault LLP for over 40 years with an emphasis in commercial disputes relating to securities law and shareholders' rights, government contracts, insurance, broadcasting and telecommunications, construction and environmental law. He is the chair of the Toronto Chapter of the Institute of Arbitration. He was the past President of the Canadian Bar Association. He was an elected bencher of the Law Society of Canada for 8 years, an elected Fellow of the American College of Trial Lawyers and of the International Academy of Trial Lawyers.

Thomas Heintzman is the author of ***Heintzman & Goldsmith on Canadian Building Contracts,*** 4th Edition which provides an analysis of the law of contracts as it applies to building contracts in Canada.

Ontario Court Has No Power To Extend Period For Setting Aside A Domestic Arbitral Award

In **R & G Draper Farms (Keswick) Ltd. v. 1758691 Ontario Inc.,** the Ontario Court of Appeal recently held that an Ontario court has no power to extend the time for an application to review or appeal from a domestic arbitration award. This is an important decision for anyone involved in arbitrations, especially in light of the short period for reviewing domestic arbitral

awards found in most of the Arbitration Acts across Canada and the longer limitation period for seeking review of international commercial arbitration awards.

The Background

The dispute arose from contracts for the purchase and sale of carrots between two Ontario-based farming concerns. The parties submitted their disputes to the Fruit and Vegetable Dispute Resolution Corporation (DRC) for resolution in accordance with the DRC's mediation and arbitration rules. The arbitrator awarded $58,507.42 to the respondent, ATV.

R & G applied to the Superior Court of Justice to set aside the arbitral award. That application and R& G's appeal to the Ontario Court of Appeal were dismissed. Both courts held that the application had been commenced outside the 30 day period for applying to set aside an arbitral award under section 47 of the **Ontario *Arbitration Act, 1991***. That Act, like those in many provinces in Canada, is modelled on the **Uniform Arbitration Act** prepared by the Uniform Law Conference for domestic arbitrations.

The limitation period for applying to set aside an award of an international commercial arbitration tribunal is much longer than that provided for in the Uniform Arbitration Act. Under Article 34 of the **UNCITRAL Model Law** attached to the ***International Commercial Arbitration Act* of Ontario** and similar statute in most other provinces, the period for bringing an application to set aside an arbitration governed by that Act is three months.

The Court of Appeal's decision in **R & G Draper Farms** can be summarized as follows:

First: The arbitration was a domestic, not an international commercial, arbitration for the following reasons: both parties had their place of business in Ontario; the carrots were grown, sold by R & G to ATV; processed and resold to R & G in Ontario; the parties had not agreed that the subject-matter of the arbitration related to more than one country; and the dispute was arbitrated in Ontario.

While the DRC described itself and its mandate as international, and while the carrots were bought for shipment to a California customer, those elements did not make the arbitration international. ICAA's definition of "international arbitration" does not turn on the reasons for or mandate of the organization administering the arbitration process, but rather on the location of the place of business of the parties, the location of the actual arbitration, the place where the obligations are performed and the place the subject matter of the arbitration is connected with. All of those elements were in Ontario.

Accordingly the limitation period in the domestic statute, not in the international statute, applied.

Second: Section 47 of the *Arbitration Act, 1991* gave the court no power to extend the 30 day period for applying to set aside the arbitral award. There was no prior decision that

supported such a power. Nor does the Act support a judicial discretion to extend the s.47 time period. In other sections of the Act, the relaxation of time periods is contemplated, but no such provision is made with respect to the 30-day time period in s.47.

Discussion

There are several reasons why this decision is important and of concern.

First, there seems to be no good reason to have different time periods for applying to set aside an arbitral award, one dealing with domestic arbitrations and the other with international arbitrations.

Second, a thirty-day period to set aside an arbitral award is quite short. The three month period prescribed under the **UNCITRAL Model Law** seems to provide a more realistic period in which to absorb the reasons of the arbitral award and make an informed decision about seeking to set it aside. Certainly the three month period in the Model Law is the internationally accepted time period for doing so and there seems to be no good reason to have a different one for domestic awards in Canada.

Finally, in British Columbia, the court has the power to extend the time period in the domestic arbitration statute, including the time to set aside or appeal an arbitral award (which is 60 days in British Columbia, not 30 days). Should the right to seek an extension of the period for setting aside an arbitral award be consistent across Canada?

R & G Draper Farms (Keswick) Ltd. v. 1758691 Ontario Inc. 2014 ONCA 278

Arbitration – Setting aside arbitral award – Limitation Periods

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